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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,313	07/07/2003	Mathieu Lion	15675P467	9364
8791	7590	04/07/2005	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD SEVENTH FLOOR LOS ANGELES, CA 90025-1030			BUGG, GEORGE A	
			ART UNIT	PAPER NUMBER
			2636	

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/615,313

Applicant(s)

LION ET AL.

Examiner

George A Bugg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13-15, 20-23, 25 and 26 is/are rejected.
- 7) ☒ Claim(s) 11, 12, 16-19 and 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: The Specification is not properly arranged according to 37 CFR 1.77(b). Appropriate correction is required.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

- (k) **SEQUENCE LISTING** (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Objections

2. Claims 8 and 14 are objected to because of the following informalities: Claim 8 contains a temperature in degrees Celsius with its equivalent temperature, in degrees Fahrenheit, next to it. However, minus forty degrees Celsius is not equal to 40 degrees Fahrenheit. The Examiner contends that Applicant inadvertently omitted the minus sign for the equivalent Fahrenheit temperature. Appropriate correction is required.
3. As for claim 14, the word "that" needs to be removed. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.
5. Regarding claims 1, 2, and 25, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

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6. The term "highly thermal" in claim 1 is a relative term, which renders the claim indefinite. The term "highly thermal" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term used to describe the thermal conductivity of the case is ambiguous. Correction is needed.

The term "approximately" in claims 7, 8, and 25 is a relative term, which renders the claim indefinite. The term "approximately" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term used to describe a temperature limit is ambiguous. Correction is needed. Claim 26 is rejected as being dependent upon an indefinite claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3, 13-15, and 20-23 rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,798,694 to Reber et al.

9. With regard to claim 1, Reber discloses a food storage apparatus (Figure 1, Element 22) including a container and a cover or lid, shown as Elements 26 and 28,

respectively. Column 2, lines 19-35, disclose that the cover or lid can snap on, screw on, or simply cover the opening of the container, for the purpose of retarding spoilage of food, as well as maintaining freshness. The Examiner contends that the seal formed by the lid and container is air-tight, or hermetic, and is equivalent. Reber also discloses that the container and the lid may be formed of metal, which is thermally conductive. Lines 44-49 teach that sensor 34, of Figure 1, can be a temperature sensor. With reference to Figures 1 and 5, and column 6, lines 1-5, the temperature sensor sends signals to the processor of the electronic tag 30, which are transmitted by transmitter 66, via radio frequency signals. In other words, the electrical signals from the temperature sensor are converted into electromagnetic signals and transmitted. In an alternate embodiment, shown in Figure 9, and disclosed in column 9, lines 17-64, the sensor and tag, which contains a transmitter, are integral to the container and lid, which constitute a case, which may be made out of metal. Furthermore, the sensor and transmitter are in close proximity, and therefore form a compact unit.

10. As for claims 2 and 3, column 10, lines 1-11 disclose a battery, near the sensor and transmitter thereby forming a compact unit.

11. As for claim 13-15, as has been previously stated, Column 2, lines 19-35, disclose that the cover or lid can snap on, screw on, or simply cover the opening of the container, for the purpose of retarding spoilage of food, as well as maintaining freshness. The Examiner contends that the seal formed by the lid and container is air-tight, or hermetic, and is equivalent. Reber also discloses that the container and the lid may be formed of metal, which is both thermally and electrically conductive, as shown in

Figure 9. Furthermore, the two pieces may be joined together to form a case, which functions as if it were a single piece. The can be removed, i.e. unsnapped or unscrewed, and therefore can be disassembled.

12. With regard to claim 20, and an output device such as an audible or visual indicator, which Reber previously discloses in column 3, lines 56-63 as a speaker, buzzer, or LCD display, thereby yielding understandable thermal data.

13. As for claim 21, Figure 5 shows a memory as element 60.

14. As for claim 22, column 4, lines 42-64, discloses an alert indication being generated when a temperature threshold, which is established by the user, is exceeded.

15. Regarding claim 23, column 10 lines 1-11 disclose the use of a touch screen or keypad (user interfaces).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,798,694 to Reber et al.

18. As for claim 4, while Reber does teach a battery, the reference does not specifically teach the claimed location of the power supply. It is the contention of the

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Examiner that its placement relative to the sensor and the transmitter is a matter of design choice and not patentably distinct, and therefore it would have been obvious to one of ordinary skill in the art to place the battery at various location with respect to the sensor and the transmitter, for the purpose of ensuring circuit viability, as well as preventing damage to the cell itself.

19. With regard to claim 5, column 3, lines 30-34, disclose the tag 30, which can contain a sensor and power supply, as disclosed with respect to column 9, lines 41-64, be hermitically sealed, to protect from water, and high and low temperatures.

20. As for claim 6, using silicone as a heat shield, due to its heat transfer properties, is well known in the art.

21. With regard to claims 7-10, column 4, lines 42-64, disclose an embodiment wherein an alert indication is generated when the temperature of a food product exceeds a predetermined threshold temperature. In addition, Reber states that this threshold may be varied. It is the contention of the Examiner that while Reber does not specifically disclose a low-end or high-end power supply operation temperature, thionyl lithium batteries, which are non-saline and non-alkaline cells, are readily available in the market place, as well as well-known, and have a wide temperature operation range, making it a highly desirable power supply for a temperature sensor, and therefore an obvious embodiment of the disclosed invention.

Allowable Subject Matter

22. Claims 5, 6, 11, 12, 16-19, and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George A Bugg whose telephone number is (571) 272-2998. The examiner can normally be reached on Monday-Thursday 9:00-6:30, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Hofsass can be reached on (571) 272-2981. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

George A Bugg
Examiner
Art Unit 2636

April 1, 2005



BRENT A. SWARTHOUT
PRIMARY EXAMINER